

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed April 29, 2004. Claims 1-36 are pending and stand rejected. Claims 37-39 are allowed. For at least the reasons discussed below, Applicant respectfully requests reconsideration and favorable action in this case.

Section 103 Rejections

The Office Action has rejected Claims 1-3, 7, 9, 13-16, 19, 21, 25-28, 31, and 33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,216,006 to Scholefield, et al. ("*Scholefield*") in view of U.S. Patent Application Publication to Mashinsky, et al. ("*Mashinsky*"). Also, the Office Action has rejected Claims 4-6, 17-18, and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over *Scholefield* and *Mashinsky* in view of U.S. Patent No. 6,407,999 to Olkkonen, et al. ("*Olkkonen*"). In addition, the Office Action has rejected Claims 8, 10-12, 20, 22-24, 32, and 34-36 under 35 U.S.C. § 103(a) as being unpatentable over *Scholefield* and *Mashinsky*, and further in view of U.S. Patent No. 5,884,174 to Nagarajan, et al. ("*Nagarajan*"). Applicant respectfully traverses these rejections.

As an initial matter, Applicant notes that *Mashinsky*, which is relied upon in all rejections, has an actual filing date (March 14, 2002) after the filing date of the present application (April 19, 2001) and therefore cannot be used to reject the claims under 102(e) or 102(e)/103 unless there is "proper support for the subject matter as required by 35 U.S.C. 119(e) or 120," (for example, see M.P.E.P. § 706.02(f)(1), Example 2) in a priority document with a filing date earlier than the present application (and subject to any possible swear behind). In the present case, the provisional application relied upon for priority (Provisional Application No. 60/275,818 filed on Mar. 14, 2001) was not included in the Final Office Action, nor was any indication given in the Office Action of what elements in the provisional application were intended to provide "proper support for the subject matter" in *Mashinsky* used in rejecting the claims. Accordingly, Applicants respectfully request that the Examiner identify the proper support for the subject matter relied upon. If there is no such support in the provisional application dated Mar. 14, 2001, the Office Action rejects the claims based solely on material filed in the PTO after the filing date of Applicant's application, which is improper. Reconsideration and favorable action is requested.

Even if the provisional application does provide support for the portions of *Mashinsky* used in the rejections, the rejections would nevertheless be improper because that publication does not teach each and every limitation of the claims. For example, Claim 1 recites, “determining a priority associated with the connection based on the subscription level information; and processing the received request for the connection based on the priority.” For the teaching of these limitations, the Examiner offers two passages in *Mashinsky* that teach a method for requesting “carrier reselection” based on the Quality of Service (QoS) and pricing information of alternative carriers. Page 6, Paragraph [0059]. To begin with, Applicant submits that the offered QoS and pricing information is carrier information, not subscription level information as recited in the claims of the Application. In addition, the QoS/Price ratings disclosed in *Mashinsky* are used to determine whether to switch to another carrier, not to determine a priority associated with a connection. In particular, the network database disclosed in *Mashinsky* stores QoS/Price ratings for each carrier, which is accessible by a wireless device. Page 6, Paragraph [0059]. *Mashinsky* further discloses that the QoS/Price rating is used by network management software of the wireless device to determine whether one carrier is more efficient than another. Page 6, Paragraph [0059]. As disclosed in *Mashinsky*, the wireless device periodically queries the network database to determine, based on the QoS/Price ratings of other carriers, whether to switch to a more efficient carrier. Page 6, Paragraph [0061]. In the case that another carrier has a better QoS/Price value, the wireless device will switch to that carrier. Page 6, Paragraph [0061]. The Examiner fails to illustrate how determining whether to switch to a more efficient carrier teaches, suggest, or discloses determining a priority associated with a connection based on subscription level information. Accordingly, Applicant respectfully request reconsideration and allowance of Claim 1 and its dependents.

Independent Claims 13 and 25 recite limitations that are similar to the limitation of Claim 1 discussed above. Therefore, these claims are allowable for reasons analogous to those discussed above in connection with Claim 1. Claims 14-24 and 26-36 depend from independent Claims 13 and 25, respectively, and are thus also patentable over the cited art.

Allowable Subject Matter

Applicant notes with appreciation the Examiner’s allowance of Claims 37-39.

CONCLUSION

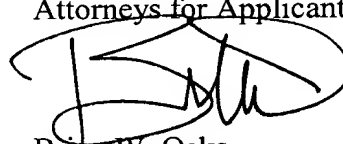
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all the pending claims.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicant hereby requests a telephone conference with the Examiner and further request that the Examiner contact the undersigned attorney to schedule the telephone conference.

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'B. W. Oaks', enclosed within a large, loopy oval shape.

Brian W. Oaks
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